



**U.S. Department of Justice**

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MKM:TH/MKP/KMT  
F. #2017R01840

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December 17, 2018

By Hand and ECF

The Honorable Nicholas G. Garaufis  
United States District Judge  
United States District Court  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Keith Raniere, et al.  
Criminal Docket No. 18-204 (NGG) (S-1)

Dear Judge Garaufis:

The government respectfully submits this letter in response to defendant Clare Bronfman's December 7, 2018 letter supplementing her motion to dismiss (DE 194) in light of a recent decision in the Ninth Circuit holding that 18 U.S.C. § 1324(a)(1)(A)(iv) is facially overbroad. See United States v. Sineneng-Smith, --- F.3d ---, 2018 WL 6314287 (9th Cir. Dec. 4, 2018). Count One of the Superseding Indictment alleges that Bronfman agreed to conduct the affairs of the charged Enterprise through a pattern of racketeering acts that includes a violation of this provision. (DE 50 (Superseding Indictment) ¶ 24 (Racketeering Act Five-A)). In light of Sineneng-Smith, Bronfman asserts that Racketeering Act Five-A should be dismissed.

Sineneng-Smith is, of course, not binding on this Court. Moreover, there is reason to believe that the Second Circuit would take a different approach to the issues raised in the case. See, e.g., United States v. Thompson, 896 F.3d 155, 165 (2d Cir. 2018) (rejecting First Amendment overbreadth challenge to 18 U.S.C. § 1591).

In any event, on December 5, 2018, the Ninth Circuit stayed the mandate in Sineneng-Smith and granted the government's request for an extension to January 17, 2019 in which to file a petition for rehearing en banc. See No. 15-10614 (9th Cir. Dec. 5, 2018) (DE 112). If the government files a petition for rehearing on or before that date, it will set forth the Department of Justice's position on the issues raised in Sineneng-Smith. The

